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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-seventh session

SUMMARY RECORD OF THE 1107th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 4 August 1995, at 10 a.m.

Chairman: Mr. AHMADU

later: Mr. GARVALOV

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GE.95-18166 (E)

The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Tenth and eleventh periodic reports of New Zealand (CERD/C/239/Add.3) (continued)

1. At the invitation of the Chairman, Mr. Armstrong, Ms. Davies, Mr. Te Koha, Mr. Ludbrook, Ms. Wilson and Ms. Broad (New Zealand) resumed their seats at the Committee table.

2. Mrs. SADIQ ALI said that in 1994 Amnesty International had reported cases of ill-treatment of inmates by prison officers in Mount Crawford prison in Wellington and Mangaroa prison near Hastings. In Mount Crawford prison the Department of Justice had identified 44 instances of ill-treatment over a 30-month period. In Mangaroa prison, some prison officers had been instructed by the prison authorities to beat inmates. Action had been taken in both cases but investigation had not led to criminal prosecutions of any Mangaroa prison staff by the end of 1994. The investigators had reported evidence of similar practices in other prisons.

3. Another report published in July 1994 had recommended the setting-up of an independent prison complaints authority, a review of prison staff recruitment and improved training. Had any action been taken in that regard? Who were the victims of the reported cruelty and had New Zealand taken any steps to introduce human rights education for prison staff, as recommended by the Committee? Had it embarked on any reform of the prison system?

4. Mr. SONG Shuhua asked whether the criteria for accepting immigrants were the same for persons of all origins and were applied uniformly throughout New Zealand. Were all immigrants treated equally by Customs and immigration officers and was there any special training for such officers?

5. The report stated that the Ministry of Pacific Island Affairs was seeking to close the gap between Pacific Islanders and others in education, employment, health, housing and economic affairs. What results had been achieved so far? How many of the nine full-time staff in Wellington and Auckland were from Tuvalu and the Solomon Islands? Had the Ministry forged links with grass-roots organizations in the islands? What was the composition of the Advisory Council and had it any decision-making authority?

6. Mr. ARMSTRONG (New Zealand) said that the range of issues covered by the Committee's questions was in itself confirmation of the significant developments that had occurred in New Zealand in the period under review. Starting with electoral reform, he described the new mixed-member proportional (MMP) system. It was a system that gave each elector two votes: one for a local Member of Parliament and one for a party drawn from a party electoral list. The list seats would be allocated to parties in accordance with their share of the nationwide party vote. It was therefore a proportional electoral system that also provided for direct election of local Members of Parliament.

7. In addition to the increase in the number of guaranteed Maori seats from four to five, there were other opportunities for Maori representation under the MMP system. The Royal Commission on the Electoral System, which had recommended its introduction, considered that it would provide considerably enhanced opportunities for Maori representation in Parliament. Parties would be compelled to select Maori candidates both for "list seats" and for "constituency seats". Maori votes would be electorally significant to all parties and there would be more competition for Maori support. The MMP system would also provide an opportunity for a party representing Maori interests to become established and win list seats in its own right. At the first MMP general election, there would be 60 electorate seats, 5 Maori electorate seats and 55 list seats in a 120-seat Parliament. A number of Members of Parliament currently holding unreserved seats were also of Maori descent. Maori had the option of enrolling on either the general roll or the Maori roll. The number of Maori seats in Parliament would rise or fall depending on the ratio of Maori enrolled on the Maori roll to Maori enrolled both on the general and on the Maori rolls at the end of the Maori option period.

8. Other ethnic groups would also have the possibility of increased representation. As the votes of all electors would be important in assisting a party to win a share of the party vote, there would be an incentive for parties to attract votes of particular ethnic groups by placing candidates from those groups in prominent positions on the party list or by adopting policies that would appeal to them. A party representing the interests of a particular ethnic group could also be established to contest the party list vote.

9. Turning to the subject of economic restructuring and its impact on employment and welfare, he said that the New Zealand Employment Service did not use ethnicity as a criterion of eligibility for its services, which were targeted at the most disadvantaged groups, including the long-term unemployed. As Maori and Pacific Islanders were substantially over-represented among the latter group, they were in effect receiving targeted assistance. Local employment service centres also worked directly with Maori and Pacific Island communities and there were two specific employment programmes for Maori to assist them in decision-making on their future training and employment needs. In response to proposals by the Prime Ministerial Task Force on Employment, the Government was developing labour market strategies for the Maori and Pacific Island peoples in recognition of their specific labour market disadvantages. It had allocated $NZ 2.4 million to the Ministry of Pacific Island Affairs to deliver employment services.

10. The Government had reconsidered some policies and introduced changes through the Task Force on Employment to counter the effects of restructuring on vulnerable groups. New Zealand had a comprehensive income support system for those who had lost employment as a result of restructuring. Changes had been introduced in December 1994 to increase the level of payments to purchase food in cases of emergency and hardship, to increase the level of grants for school uniforms and to provide grants to meet costs associated with the transition from receipt of benefit to resumption of employment. Since April 1995 supplementary benefits had been made available to a wider group of people on low incomes. Further adjustments had been made in the recent budget, including increased funding for organizations providing employment

support for people with disabilities, an extension to a programme providing training and employment support for single parents, and increases in the maximum amount of the accommodation supplement.

11. A very significant economic reform process had taken place in New Zealand over the previous 10 years. There was clear evidence that the improved economic performance had led to improvements in job creation and income levels.

12. The Government's view was that there had been a noticeable improvement in protection of human rights since the Race Relations Act of 1971 and the Human Rights Commission Act of 1977 had been amalgamated in the Human Rights Act of 1993. New grounds of prohibited discrimination included disability, age, political opinion, employment status, family status and sexual orientation. The functions and powers of the Human Rights Commission and the Race Relations Conciliator had been enhanced in section 5 of the Human Rights Act, which included the possibility of publishing guidelines for the avoidance of practices that might be contrary to the Act, conducting general inquiries into any matter if it appeared that human rights might be infringed thereby and making public statements regarding any groups of persons in New Zealand or intending to enter the country and who might be subject to hostility or contempt by reason of their race, colour or ethnic or national origins.

13. Section 61.2 of the Act provided a defence for a publisher or broadcaster if the report of the matter or words accurately conveyed the intention of the person who published or distributed the matter or broadcast or used the words. The intention of the publisher or broadcaster did not appear to be considered relevant There was no similar defence under section 131, which required intent to excite hostility or ill-will or to bring into contempt or ridicule and which carried a criminal penalty.

14. There had been one prosecution by the police in Christchurch under section 25 of the Race Relations Act of 1971 during the period under review. A successful action had been brought in December 1993 against a person who had incited colleagues to damage an Indian-owned dairy. The Department of Justice took the view that the small number of prosecutions under what had become section 131 of the Human Rights Act was partly due to the fact that police had other legislation under which they could deal with the relevant criminal activities, for example criminal damage offences or offensive behaviour. The police had decided in the 1993 case to prosecute under the Race Relations Act in order to show that they were prepared to take action on incitement to racial disharmony.

15. Section 5 of the Human Rights Act gave the Race Relations Conciliator a wider specific jurisdiction than previously to inquire into, or make statements about, race matters that did not fall within the Conciliator's unlawful discrimination jurisdiction. In practice, all Conciliators to date had considered that the office had an educational function under the Race Relations Act of 1971, even though it had not been spelt out in the Act. Section 5 also expanded the powers of the Human Rights Commission.

16. Indirect discrimination was covered by section 65 of the Human Rights Act, which stated that where any conduct, practice, requirement or condition

that was apparently in contravention of the Act had the effect of treating a person or group of persons in a discriminatory way, that conduct, practice, requirement or condition was considered unlawful unless good reason for it was established. Sections 61 and 131 provided for penalties for racially offensive expressions.

17. Between 1 July 1994 and 30 June 1995, a total of 587 complaints had been received by the Race Relations Office. Of those, 40 per cent related to section 61 and 22 per cent to section 63, compared with 37 and 17.8 per cent respectively for the previous 12 months. The next most prominent group of complaints, 10.2 per cent of the total, related to the provision of goods and services. In 1994/1995 there had been 94 mediated settlements through the Race Relations Office.

18. All government departments and agencies and many private companies had an equal-opportunity policy, which usually sought to identify and eliminate all aspects of procedures, policies and other instrumental or administrative barriers that caused or maintained inequality in respect of employment. Progress was being made in the protection and promotion of the rights of ethnic minorities, particularly those of Maori and Pacific Island peoples, and in the recognition and prevention of harassment, especially of a racial or sexual nature. Section 73 of the Human Rights Act of 1993 provided for affirmative action policies consistent with article 2 of the Convention.

19. Responding to queries about the Race Relations Conciliator, he said that under the Human Rights Act of 1993, where a complaint was found to have substance, efforts must be made to reach a conciliated settlement between the parties concerned. If that proved unsuccessful, then the Complaints Division considered whether it should be referred to the Proceedings Commissioner, who in turn decided whether to commence proceedings before the Complaints Review Tribunal. Where the Tribunal considered that the complaint was well-founded, it could issue orders for damages, restrain the defendant from continuing or repeating the breach, or order the defendant to perform any act specified with a view to redressing any loss or damage suffered by the complainant.

20. Anyone could lodge a complaint about alleged racial discrimination against himself. A complaint might also be made by one person on behalf of another so long as he was a relative or associate of the complainant. There was no specific provision in the Human Rights Act for complainants representing group interests. However, the Proceedings Commissioner was allowed to bring proceedings before the Complaints Review Tribunal on behalf of a class of persons in the case of a discriminatory practice that affected the class and constituted a breach of part II of the Act. Furthermore, by an amendment to section 39 of the Employment Contracts Act, a complainant could choose the Act under which he wished to pursue a complaint. However, a complaint could not be pursued under both the Employment Contracts Act and the Human Rights Act. Lastly, the Complaints Division might decide not to investigate a complaint or to cease its inquiries where the complainant could reasonably avail himself of an adequate remedy or a right of appeal, other than a petition to Parliament or complaint to the Ombudsman.

21. The Country Rapporteur had inquired whether the fact that radical Maori nationalists were winning support in relation to the settlement of claims

might not place a strain on relations between Maori and other New Zealanders. In the main, the Government considered the issues raised by Maori nationalists to lie outside the parameters of the treaty claims settlement process. Adverse reaction to the treaty settlement proposals should not be regarded as a demonstration of support for Maori nationalists. While there was considerable support among Maori for the settlement of treaty claims, there was also dissatisfaction over the progress on individual claim settlements that had been exacerbated by Maori concern over the sale of Crown-owned assets. Hence the Government's recent decision to suspend sales of all surplus Crown land in areas where land had been confiscated during the last century.

22. Providing further clarification of the Employment Contracts Act, he said that the personal grievance procedures provided for under the Act were designed to encourage the parties involved to resolve the complaint themselves. If that was not possible, then the parties could apply to the Employment Tribunal for mediation or adjudication. A mediated settlement was binding on the parties where the mediator was requested to take a decision. However, an adjudicated decision could be appealed against to the Employment Court within one month of the Tribunal's decision. An appeal against the Employment Court's decision could subsequently be lodged in the Court of Appeal.

23. In response to the Country Rapporteur's query regarding personal grievance cases, he said that the issue of where the burden of proof lay depended on the nature of the claim. In cases where the employer's conduct might or might not be justified, for instance dismissal, although the employee must show a prima facie case, including bringing evidence to establish his dismissal, the primary onus was on the employer to prove that his actions had been justified. In cases of discrimination, where there could be no justification for an employer's conduct, the employee must satisfy the Employment Tribunal or Employment Court that discrimination had occurred. That ensured that the employer was not obliged to disprove allegations relating to discrimination, when he might not have the means of doing so. Furthermore it reflected the position in ordinary civil cases that the burden of proof lay with the claimant to make out his case on the balance of probabilities.

24. As to the clarification sought by the County Rapporteur regarding demographic information provided by the New Zealand delegation, he explained that the block identified as the "ethnic sector" in the pie chart on page 5 of the report, represented the total ethnic sector population. In other words, the "ethnic sector" was the sum of the population in the ethnic groups. People classified in the pie chart as "New Zealand European" were those who had identified themselves as such. People who had chosen any of the ethnic groups listed were classified as belonging to the ethnic sector and not included in the European or ethnic groups. Moreover, the Standard Classification of Ethnicity used in New Zealand statistics was in line with relevant international standards. It was a hierarchical classification, ranging from the general to the specific. Thus, an immigrant from the United States of America of African origin would be classified as "Other"; "African/Africa origin"; "North American black". Further information on the subject provided by the New Zealand Statistics Office could be made available.

25. In conclusion, he stressed that the reporting period had seen a significant development in that the Government had sought to promote a peaceful and equitable settlement of historical grievances and to deal with the social and economic disparities between different ethnic groups. The main focus of New Zealand policy on Maori development had been the settlement of claims under the Treaty of Waitangi, as well as mainstreaming for Maori in all government programmes, for better economic conditions were regarded as the key to Maori social and cultural development.

26. Mr. Garvalov took the Chair.

27. Mr. TE KOHA (New Zealand), replying to queries regarding the various agencies involved in Maori affairs and human rights activities, said that the Ministry for Maori Development (Te Puni Kokiri) had been established in January 1992 essentially as a policy ministry. Its Chief Executive was of Maori descent. Moreover, Maori held 27 per cent of the management posts and represented 65 per cent of the total staff. The primary role of the Ministry was to provide strategic advice to the Minister for Maori Affairs and other members of the Cabinet. He admitted that the wide range of agencies active in the field of human rights, including the Human Rights Commission, the Office of the Race Relations Conciliator and the Ombudsman, might cause some confusion among members of the public. However, there was no overlapping or competition regarding their different areas of responsibility.

28. As to the settlement of historical grievances while the Government had disbursed $NZ 335 million in the pursuit of final and partial settlements with Maori claimants, there had been no further claims on the scale of the Waitangi Fisheries or Waikato/Tainui land confiscation claims cases. He confirmed that the "fiscal envelope" (the sum earmarked by the Government for the settlement of historical claims) amounted to $NZ 1 billion. He could not provide any information as to how that figure had been established, since what had been involved was a political situation that had not been open to discussion. It had been asked whether the Government was optimistic that the settlement of treaty claims would give Maori the economic impetus to make better provision for their development aspirations. Clearly, what use was made of the assets derived from the settlement of such claims would ultimately be determined by Maoris themselves. However, it should be noted that the settlement of historical grievances would in no way alter government policies to improve the social and economic conditions of the Maori people. Moreover, the settlements would in no way remove, restrict or replace Maori rights under the Treaty of Waitangi, including Maori access to mainstream government programmes.

29. The remarks made by Chief Judge Durie of the Waitangi Tribunal in 1959 at Oxford and similar statements had been prompted by problems relating to the "settlement envelope", including the Government's need to make provision for upcoming claims and the fact that claimants should be able to assess whether their settlement was fair. The "settlement envelope" was based on the notion that redress might consist of assets, money and rights. The need for compromise in the settlement of Maori claims had not been intended as a main feature of the envelope. As to the possible return of lands to the Maori people, the Government recognized that monetary settlements were preferable since they enabled claimants to repurchase lands or assets themselves. In that connection, the Government had set up two different mechanisms. The

first was the Crown protection mechanism, under which surplus land belonging to the Crown was held pending the settlement of claims and surplus land could be used in partial settlement. And second, priority was given to claims submitted by persons residing in "confiscation lands".

30. Regarding the Maori reaction to the "Fiscal Envelope", he informed the Committee that the deadline for submitting comments on the Crown proposals for treaty settlements was 31 August 1995 and that many suggestions on possible amendments had already been received. It should be noted that the Government did not require claimants to agree to the "settlement envelope" or the amount involved in order to enter into negotiations for the settlement of claims. The recent settlement of the Waikato-Tainui land confiscation claim was a good example of the success that could be achieved in such matters where the good will of both Maori and government parties prevailed. He dismissed as inaccurate reports to the effect that the outbreak of violence at Waitangi in February had in some way been connected with the "fiscal envelope", stressing that the Waitangi Day commemorations had taken place two weeks prior to the start of consultations on the treaty settlement proposals. Nor was it true that the disruption had been supported by the majority of the Maori population. The Government considered that the "settlement envelope" was fully in line with the provisions of the Treaty of Waitangi since it had been drawn up in good faith to address claims arising from that Treaty in a fair and honourable way. The sum contained in the "envelope" had been decided on the basis of a number of factors, including the need for durable settlements and the importance of removing claimants' sense of grievance. It must also be a sum which would be regarded as affordable by the wider community.

31. The Waitangi Tribunal was a quasi-judicial body with statutory authority. It made both general and specific recommendations to the Crown, which the Government was empowered to reject under the relevant legislative Acts. Although not all recommendations made by the Tribunal were followed up, the Government regarded it as an effective means of resolving treaty grievances. Since the drafting of the report (CERD/C/239/Add.3), two further claims had been entered in the negotiations register of the Waitangi Tribunal and three of the claims listed in paragraph 27 of the report had been settled.

32. He confirmed that Maori Members of Parliament had expressed reservations regarding the Treaty of Waitangi (Fisheries Claims) Settlement Act during its passage through Parliament. They had claimed that the proceeds of the settlement would not be fairly distributed among Maori tribes and sub-tribes. They had also expressed concern about the level of support among the Maori population for the settlement and had questioned the provisions to the effect that the settlement would resolve all claims present and future by Maori in respect of commercial fishing. Court proceedings instituted by representatives of the tribes opposed to the settlement had been dismissed by the Attorney-General in 1993 on the basis of the established principle of non-interference by the courts in parliamentary proceedings. He had ruled that Parliament was free to enact legislation on the lines envisaged in the deed of settlement or otherwise. Many of the issues raised in opposition to the settlement at that time had been the subject of a communication submitted to the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights.

33. In reply to a question on the role of the Waitangi Fisheries Commission in identifying fisheries settlement beneficiaries, he pointed out that the Treaty of Waitangi had been signed between the Crown and tribes and sub-tribes. Settlements were therefore not negotiated directly with the Maori population. The Crown needed assurance that the settlement was being made with the right tribe or sub-tribe grouping so as to ensure a final settlement and to avoid further grievances. It was also important that all persons entitled to benefits by virtue of their tribal membership were identified and had the opportunity to participate in decisions affecting the distribution of benefits.

34. There had been several queries concerning the Waitargi Tribunal Amendment Act and whether it contradicted the Government's commitment to the settlement of claims. It should be noted that the amendment clarified a very narrow point arising from a Waitangi Tribunal report of April 1992 on the Te Roroa claim, in which it had been recommended that the Crown should purchase certain private lands involved in that claim. He explained that claims addressed to the Waitangi Tribunal and their eventual settlement were matters which concerned only the Maori and the Crown. Under section 6 of the Treaty of Waitangi Act of 1975, a Maori could make a claim where he had been prejudicially affected by some activity of the Crown. Where the Tribunal considered the claim to be well-founded, it could make a recommendation to the Crown that certain Crown-owned land should be applied to redress the claim. That was justifiable in terms of the Treaty since the Crown had control over Crown-owned lands. A fundamental principle of the treaty claims settlement process that one injustice could not be addressed by creating another and a recommendation that the Crown should take certain action in respect of privately-owned land was not consistent with the Crown's duty to protect the rights of private citizens. The amendment had therefore been necessary to protect the reputation of the Tribunal and its acceptability to the people of New Zealand as a whole. Moreover, the fears raised over the Te Roroa report were such that they might have placed the whole treaty settlement process in jeopardy.

35. On the subject of the status of the Treaty of Waitangi vis-à-vis international law, he said that the Treaty had been recognized as the founding constitutional document by successive New Zealand Governments and courts of law. The need for a judicial ruling regarding its validity under international law had never arisen. The Treaty had been concluded in 1840 between the British Sovereign and the Maori chiefs.

36. The Waitangi Tribunal was composed of 15 members. There were currently six Maori on the Tribunal, including two women. Anyone who claimed to be Maori was entitled to access to the Tribunal. A communications department dealt with inquiries from the general public and the media. Groups or persons representing a group interest could address claims to the Tribunal, although the claims must identify at least one individual.

37. A number of points of clarification had been requested regarding the Te Ture Whenua Maori (Maori Land Act) of 1993. The Act drew an important distinction between two categories of land: general land which could be freely alienated, Maori freehold land which was subject to the alienation restrictions specified in the Act. The whole or part of a block of Maori

freehold land could be sold by agreement of all the owners, or pursuant to a special resolution. In all cases the owners proposing to dispose of the block must give a first right of refusal to prospective purchasers who belonged to one or more of the preferred class of alienee. The preferred class comprised the family or tribal group associated in accordance with Maori custom with that particular land. Nevertheless, the situation was different when trying to alienate an undivided beneficial interest in Maori land. It could only be alienated to a person belonging to one or more of the preferred class of alienees subject to confirmation by the Maori Land Court. Such restrictions did not, however, apply to shares in a Maori incorporation or any other beneficial interest in land, legal interest of which was vested in a Maori incorporation.

38. The rules regarding alienation of Maori land applied to transfer among Maori as well as from Maori to non-Maori people, since the "preferred class of alienee" concept adopted in the Act was designed to promote the retention of Maori land by families and sub-tribal relatives and descendants of the person transferring the land. So while retention of Maori land by Maori people was the guiding principle of the Act, it might be more accurately described as retention of Maori land within the traditional descent group associated with that land. Such restrictions applied exclusively to land owned by Maori since, following years of extensive consultations, that solution seemed to meet Maori needs. The Act was intended to address their long-standing concern regarding the gradual loss of freehold land. The Act also established structures for the more effective use, management and development of multiple-owned Maori land.

39. A number of questions had been asked about Maori education and the Maori language, in terms of the impact of the taha Maori syllabus and employment prospects for emerging students. Significant advances in educational outcomes for Maoris in the five years since the advent of Tomorrow's Schools provided solid grounds for optimism about the future position of Maori in education. Between 1990 and 1993, Maori participation in early-childhood education programmes had grown strongly. However, overall participation had grown almost as rapidly, suggesting that the gap between Maori and non-Maori participation had closed very little. By 1990, the Maori "language nests" (Kohanga reo) had become the largest providers of early-childhood education for Maori and accounted for most of the growth in enrolment. As to whether the programmes would in the long run enhance employment opportunities for Maori, he said that, although the initiatives had Maori language and culture as their focal point, they aimed to create an educational context which could produce learners able to operate confidently in both the Maori and non-Maori worlds. The Kura Kaupapa Maori (Maori immersion primary schools) aimed to produce bilingual students proficient in both English and Maori. It was too early to draw firm conclusions about the performance of those programmes, but there were signs of a difference in terms of the educational experiences of Maori children and of facilitating Maori development on a broad scale. Studies had documented higher levels of confidence among primary school children in Kaupapa Maori. In terms of academic achievement, a recent study had found positive results for Maori children in the core subjects of mathematics and written English. In another study, comparing ability in

mathematics, Maori children had outperformed their English-taught peers at a neighbouring mainstream school. The positive outcomes expected from Maori-medium initiatives should in turn lead to more favourable opportunities in the labour market.

40. The active promotion of the Maori language as a national language of New Zealand had inspired many New Zealanders to study it. Non-Maori constituted 83 per cent of the students of taha Maori, 50 per cent of the students in Maori language classes and 9 per cent of students in Maori-medium education. A small number of adults were studying the language at tertiary institutions or in community education or work-based programmes. A key feature of the Year of the Maori Language (1995) was to encourage non-Maori as well as Maori to use the Maori language. Two Maori tertiary institutions had already been established and another was expected to be functioning by the end of 1995.

41. In reply to Mr. Wolfrum's question about criminal justice, he said that psychological services were made available to all prison inmates. The Corrections Psychological Services Division was committed to enhancing its services to Maori generally, and a number of special initiatives had been taken, including training workshops in Maori on psychology. A system of bursaries had been established to encourage Maori students to acquire qualifications in clinical psychology. The Division employed two full-time Maori consultants and one part-time. The Corrections Department encouraged links between Maori offenders and their extended families and between prison institutions and local tribal groups. Visits by Maori elders to prisons were a common sight. The needs of Maori inmates were considered in the cultural programmes provided by prisons and the significant number of Maori among prison staff further assisted the adjustment of Maori to prison life.

42. On the question whether there were a disproportionate number of Maori among criminal offenders, he said that 10.6 per cent of the New Zealand population aged 15 and above were Maori. Information on convictions and sentencing indicated that in 1994, European offenders had accounted for 41 per cent of violent offences, Maori for 43 per cent and Pacific Islanders for 14 per cent. Of offences against property, 47 per cent had been committed by Europeans and 43 per cent by Maori. In 1994, 49 per cent of cases brought had concerned Maori, 41 per cent Europeans and 11 per cent Pacific Island people. There had been little change in the proportion of offences committed by Maori in recent years.

43. In reply to questions regarding housing and age structure and their links with employment, he noted that the youthful age structure of the Maori population meant that proportionately more people rented than owned their own homes when compared with the European population, which had an older age structure. The 1992 census had showed that renters tended to have lower incomes and to be young. Forty-nine per cent of Maori were accommodated in rental housing as compared with 24 per cent of the New Zealand population as a whole. There was a strong link to unemployment, given that the unemployed had lower incomes and were more likely to rent instead of buying. A higher proportion of Maori were unemployed.

44. Mr. ARMSTRONG (New Zealand) said it had been suggested by Mr. Chigovera and Mr. Valencia Rodriguez that New Zealand legislative provisions did not fulfil the requirements of article 4 (b) of the Convention relating to the illegality and prohibition of organizations inciting racial discrimination. While the term "person" was not defined in the Human Rights Act, the statutory interpretation under New Zealand law was that it referred to groups and organizations as well as to individuals. Thus, although the Act did not prohibit the establishment of racist organizations per se, its sections 61 and 63 made it unlawful for any organization to publish or distribute racist material and to engage in racial discrimination, while its section 131 covered the offence of inciting racial disharmony. Therefore, the extent to which organizations with racist aims could promote them was clearly restricted. Prior to the adoption of the 1993 Human Rights Act, there had been no discussion or consideration of including specific provisions in the Act to outlaw racist organizations. However, when the Bill that had become the 1971 Race Relations Act had been considered, the view taken at the time had been that its section 25, which corresponded to section 131 of the 1993 Act, satisfactorily implemented New Zealand's obligations under article 4 of the Convention.

45. Mr. Chigovera had asked in connection with Tokelau, how so small a population would be able to govern itself if it chose self-governing status. The people of Tokelau themselves had taken the decision to pursue that path. Their leader had told the United Nations visiting mission in 1994 that the islanders were actively considering self-determination and self-government, while confirming that they wished at the same time to retain the status of free association with New Zealand. Tokelau might be small but the population were very deliberately preparing themselves for self-government. He could himself attest to the vigour and independence of the political process there and emphasized that the New Zealand Government would continue to support moves towards self-government. New Zealand's firm commitment to continue to provide assistance, once an act of self-determination had taken place, had been made clear to the people of Tokelau.

46. Mr. WOLFRUM had referred to a communication to the human rights Committee concerning the Fisheries Settlement. After the passage of legislation effecting the Settlement at the end of 1992, a Maori group had lodged a complaint with that Committee under the Optional Protocol, claiming that it breached various rights guaranteed under the Covenant. The New Zealand Government had challenged the admissibility of that communication. The details were extremely complex and the Human Rights Committee still had to consider its admissibility. Since that Committee held that the details of communications should remain confidential until it had acted, he was unable to discuss the matter any further but if, when New Zealand submitted its next periodic report, the case had been dealt with, his delegation would be ready to discuss it.

47. Mr. de Gouttes had asked for clarification of paragraphs 72 and 73 of the New Zealand core document concerning the recognizance given by the New Zealand courts to international treaties. Under the New Zealand legal system, international treaties were not self-executing as part of domestic law, except when they set out rules of customary international law or unless they had been specially incorporated in domestic law and given legal effect by legislation

passed by Parliament. While New Zealand was not considering making a declaration under article 14 of the Convention, it should be noted in that connection that it had accepted a broadly-based process of complaint to the Human Rights Committee under the Optional Protocol to the Covenant. Nor did New Zealand intend to subscribe to ILO Convention No. 169. Consultations held in 1990 had shown that there were serious reservations about its provisions and resistance to its ratification. In view of the doubts expressed to the New Zealand Human Rights Commission, the Government had decided not to ratify the Convention, although it should be noted that it supported an appropriate declaration on the rights of indigenous peoples and had participated actively in the preparation of a draft text of the declaration.

48. Turning to issues that had been raised about immigration, he said that Mr. Chigovera had referred to concerns in some sectors of New Zealand society about the possible impact of immigration on racial harmony, commenting on the importance of such concerns being addressed by Government. Both the 1991 Immigration Amendment Act and more recent changes had been touched upon in the delegation's introductory statement to the Committee. His Government was very conscious of the need to ensure that social cohesion was maintained alongside economic growth. It was aware that there were some Maori concerns about immigration policies. Improvements were being made to the Immigration Services' data collection and evaluation systems with a view to more comprehensive information being made available regarding the impact of immigration, thus facilitating an informed public dialogue. Among recent adjustments was the emphasis within the points system on indications of ability to settle successfully into New Zealand society. The Government continued to be actively committed to racial harmony and to recognizing the special place of Maori. It remained sensitive to the potential of high levels of immigration to have an impact in that connection.

49. Mr. Chigovera had also asked whether the new policy was consistent with New Zealand's obligations under the Waitangi Treaty. The Government was confident that its policy was consistent with those obligations. Its authority to practise governorship was stated in article 1 of the Treaty and the Government took that provision to mean that it could act on behalf of all New Zealanders in developing immigration policy for non-Maori who wished to live in New Zealand. Maori opinion had been taken fully into account when the new immigration policy had been developed.

50. Mrs. Sadiq Ali had asked about incidents that had occurred at two prisons. He had no information on the incidents at Mount Crawford, but with regard to Mongorao he could report that the Ministry of Justice had held an independent inquiry into management practices at the prison. The report that had emerged contained some 60 recommendations for improvements, some applying specifically to Mongoroa and others to the prison system as a whole. Forty-eight of those recommendations had been implemented and all would be implemented by the end of the year. Disciplinary procedures had been instituted against some prison officers and 17 had been suspended. In June 1993, 12 of those officers had been dismissed; 6 had been later reinstated on appeal and assigned to other institutions. In September 1993, the Human Rights Commission had recommended to the Secretary of Justice that the matter should be referred to the police for investigation and possible criminal proceedings. The New Zealand police were pursuing their irquiries.

The Government had cooperated fully with Amnesty International in providing information on the incidents, and it would be happy to provide the Committee with information on the incidents at Mount Crawford at a later date.

51. Mr. Song Shuhua had asked whether the criteria for accepting immigrants were the same for immigrants from all sources and applied equally throughout New Zealand. The criteria were the same: the points system had been designed to establish an objective measure of the merits of all applicants, to be assessed against such criteria as professional or technical qualifications, valid job offers made to them and whether they were sponsored by communities in New Zealand. The criteria were transparent and applied to all immigrants In response to Mr. Song Shuhua's question about the training of New Zealand immigration officials, he emphasized that all officials were required to deal with immigrants only on the basis of the criteria established by the Government. He had no details of their specific training but he could report that the training of Customs staff at New Zealand ports and airports included cross-cultural awareness.

52. In reply to questions whether the report and the record of the discussions would be published in New Zealand, he said that after the presentation of human rights reports the practice was to issue a Government publication containing the report itself, the New Zealand opening statement, questions and answers, and the Committee's concluding observations. The final document was widely distributed in New Zealand.

53. The CHAIRMAN thanked the delegation of New Zealand for its extensive replies and asked whether Committee members wished to comment further.

54. Mr. ABOUL-NASR said that the report clearly showed that New Zealand took its commitments under the Convention seriously. Nevertheless, the reply to Mr. Song Shuhua's questions had triggered certain questions in his mind. He noted that terms such as "racial harmony" "social cohesion" and the "impact of immigration on the population", though denoting considerations that were undeniably important, tended to be used by racist groups to explain and introduce their ideas about keeping society "pure". Such criteria were a double-edged weapon. He asked whether the representative of New Zealand could say to what extent there was a feeling among New Zealanders that New Zealand should be kept apart from Asia and made a European island outside Europe. He realized that official policy was against that, but he would like to know the real feelings of the people of New Zealand. He wondered how long New Zealand would continue to belong to the Western European and Other States Group in the United Nations. Were there people in New Zealand who thought it was time for the country to be opened psychologically to the part of the world in which it existed?

55. Mr. DIACONU commended New Zealand's detailed report and strenuous efforts to improve and protect the rights of its people. However, he was concerned at the statistics given in paragraph 55, which made it clear that the Maori people's share of the land was not commensurate with the size of its population. Much of the land was owned by the Crown or in private, non-Maori hands. As part of that land might have been seized unlawfully in the past, its return to the Maori should be considered. It was difficult to understand why the Maori people were given only financial compensation, as opposed to

land. He asked why the Treaty of Waitangi Amendment Act was so categorical in preventing the Waitangi Tribunal from making recommendations for a return to Maori ownership of any private land or the acquisition by the Crown of any private land for the settlement of Treaty grievances.

56. Mr. van BOVEN thanked the delegation of New Zealand for its exhaustive replies to the Committee's questions. It was gratifying to note that the report to the Committee, copies of the oral presentation and the general debate with Committee members were reproduced and published in New Zealand. The Committee would welcome a copy of the publication and should prevail on other States parties to follow New Zealand's example.

57. It was unfortunate that New Zealand would not consider acceding to article 14 of the Convention because it had already ratified the Optional Protocol to the International Covenant on Civil and Political Rights and accepted the reporting procedures therein, which it considered adequate. However, citizens of New Zealand should be allowed to enjoy the right of individual petition under the Convention on the Elimination of All Forms of Racial Discrimination to air any grievances they might have in the Committee's specific area of competence.

58. Mr. SHAHI thanked the members of the New Zealand delegation for their comprehensive replies to the Committee's questions. Progress had been made since the previous report in terms of dialogue and consultation with the Maori people, efforts to settle their historic grievances and policies to improve the situation of ethnic groups.

59. The Treaty of Waitangi Amendment Act was, however, an area of concern in so far as it discounted any claim to land that had been confiscated by private parties. It was also unfortunate that New Zealand would not consider acceding to article 14 of the Convention, for reasons that were not clear. It was to be hoped that, following the debate with the Committee, New Zealand would reconsider its position on that article and article 4.

60. Mr. WOLFRUM asked who was responsible for identifying members of ethnic groups. The Committee had in the past noted that self-identification was the commonest practice.

61. Mr. de GOUTEES said that the quality of New Zealand's report was proof positive that it had nothing to fear from acceding to article 14 of the Convention and thus allowing individual petitions to be lodged with the Committee. It had accepted reporting procedures under the Optional Protocol to the International Covenant on Civil and Political Rights and was therefore not unfamiliar with what the procedures entailed.

62. The CHAIRMAN speaking in a personal capacity said that New Zealand's report was honest and informative and that the dialogue with the delegation had been frank and productive. New Zealand should, in keeping with that spirit of openness, consider acceding to article 14 so that any grievances relating to racial discrimination could be dealt with by the Committee, which had specialized knowledge of the subject.

63. The Special Committee on decolonization had, over the years, dealt with many countries' transition from non-self-governing status to self-determination or independence. New Zealand's efforts in the past to prepare Niue and the Cook Islands for self-government were commendable, as were its efforts to introduce constitutional change in Tokelau.

64. Mr. ARMSTRONG (New Zealand) said that he would submit written replies to the questions on the Treaty of Waitangi Amendment Act and to Mr. Wolfrum's question on who determined ethnic identity. The Committee's comments on articles 4 (b) and 14 of the Convention had been duly noted.

65. With regard to Mr. Aboul-Nasr's question on the feeling in the country about geographical allegiances, he said that New Zealand had many trade and economic links with other countries of the Asia-Pacific region. The people of New Zealand saw themselves as members of a multicultural society and appreciated their regional partnerships. The Government was encouraging a sense of identity through its "Asia 2000 Programme". New Zealand remained a member of the Western European and Other States Group in the United Nations but belonged to the Asian Group in other bodies, such as the International Labour Organization.

66. The period under review in New Zealand's reports had seen many important developments with regard to ethnic minorities, not the least of which had been the significant claims settlements, the ongoing work of the Waitangi Tribunal, the restoration of the Department of Maori Affairs and the Government's efforts to take account of the interests of ethnic minorities through the Ethnic Affairs Section of the Department of Internal Affairs and the Department of Pacific Island Affairs. His delegation had noted the comments made by the Committee on the Human Rights Act of 1993.

67. Mr. CHIGOVERA (Country Rapporteur) said that he welcomed the honest and objective report and the delegation's frank replies to the questions raised by the Committee. It was unfortunate, however, that New Zealand had not altered its position on article 4 (b) of the Convention. It should remember that the main aim of that article was to provide a means of preventing racial discrimination. New Zealand should give some thought to that matter.

68. The CHAIRMAN said that the Committee had thus concluded the first phase of its consideration of the tenth and eleventh periodic reports of New Zealand (CERD/C/239/Add.3).

69. Mr. Armstrong, Ms. Davies, Mr. Te Koha, Mr. Ludbrook, Ms. Wilson and Ms. Broad (New Zealand) withdrew.

The meeting rose at 12.55 p.m.